

**75-2a-109 Effect of current health care preferences -- When a surrogate may act.**

- (1) An adult with health care decision making capacity retains the right to make health care decisions as long as the adult has health care decision making capacity as defined in Section 75-2a-103. For purposes of this chapter, the inability to communicate through speech does not mean that the adult lacks health care decision making capacity.
- (2) An adult's current health care decisions, however expressed or indicated, always supersede an adult's prior decisions or health care directives.
- (3) Unless otherwise directed in an advance health care directive, an advance health care directive or the authority of a surrogate to make health care decisions on behalf of an adult:
  - (a) is effective only after a physician, physician assistant, or APRN makes a determination of incapacity as provided in Section 75-2a-104;
  - (b) remains in effect during any period of time in which the declarant lacks capacity to make health care decisions; and
  - (c) ceases to be effective when:
    - (i) a declarant disqualifies a surrogate or revokes the advance health care directive;
    - (ii) a health care provider finds that the declarant has health care decision making capacity;
    - (iii) a court issues an order invalidating a health care directive; or
    - (iv) the declarant has challenged the finding of incapacity under the provisions of Subsection 75-2a-104(3).

Amended by Chapter 99, 2009 General Session